COMMITTEE ON THE REMUNERATION OF THE JUDGES OF THE COURT OF QUÉBEC AND THE MUNICIPAL COURTS

REPORT OF THE PANEL DEALING WITH THE JUDGES OF THE COURT OF QUÉBEC AND THE MUNICIPAL COURTS OF LAVAL, MONTREAL AND QUÉBEC

(Pension plan and social advantages relating to this plan and to the collective insurance plans)

September 1999

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PROLOGUE

A message to the National Assembly

On August 4, 1998, the Committee of the Remuneration of Judges of the Court of Québec and the Municipal Courts submitted its report to the Minister of Justice, concerning the remuneration of provincially appointed judges.

Our report recommended, *inter alia*, that the question of the pension plan, as well as those dealing with the annuity payable to the surviving spouse of the retired judge, the cases of early pension due to impossibility of discharging the duties of judge, the transfer and buy-back of years of service acquired before the appointment as judge, be examined during the next two years.

In application of the third paragraph of section 246.29 of the *Courts of Justice Act* (R.S.Q. c. T-16), on March 8, 1999, the Conference of Judges of Québec requested that we examine these other elements of the remuneration.

Within the framework determined by the act of December 1997 (Q.S. 1997, c. 84), we answer these questions.

It is now up to the National Assembly to decide on our recommendations, in accordance with section 246.44 of the *Act concerning the remuneration of judges*.

The members of the Committee

I. INTRODUCTION

The Order in Council of the Government of Québec of February 17, 1998, bearing number 191-98, designated the members of the Committee on the Remuneration of the Judges of the Court of Québec and the Municipal Courts for a mandate of three (3) years.

Within this context, the members thus designated for the Committee of judges of the Court of Québec and the municipal courts of Laval, Montreal and Québec submitted their report in August 1998.

One of the recommendations of the report of the Committee dealt with the matter of the pension plan, as well as those dealing with the annuity payable to the surviving spouse of a retired judge, the cases of early retirement due to impossibility of discharging the duties of judge, as well as the transfer and buy-back of years of service acquired before the appointment as judge. The Committee recommended as follows:

> *"The Committee recommends that be examined, during the next two years, the matter dealing with the pension plan, as well as those dealing with annuity payable to the surviving spouse of a retired judge, the cases of early retirement due to the impossibility of discharging*

the duties of judge, the transferability and buy-back of years of service acquired before appointment as judge."

On March 8, 1999, Mtre. Claude Bisson, in his capacity of President of the Committee, received from the president of the Conference of Judges of Québec, the Honourable Claude C. Boulanger, a request to have these questions examined. This letter, dated March 2, 1999, followed up on a first correspondence of Judge Boulanger which requested a follow-up on the recommendation of the Committee in its report of August 1998 dealing with the pension plan. The letters of the president of the Conference of Judges of Québec are produced as Schedule A.

On March 10, 1999, the Minister of Justice, Mrs. Linda Goupil, also transmitted a letter to the president of the Committee requesting the examination of a modification to the pension plan which would make it contributory. A copy of the letter of the Minister is annexed to the report as Schedule B.

In this context and relying on the third paragraph of section 246.29 of the *Act concerning the remuneration of judges*, the Committee responded to the requests of the Conference of Judges of Québec and the Minister of Justice.

II. EXAMINATION PROCESS

The Intervenors

On April 16, 1999, the Committee organized a meeting of all those concerned by the request of the Conference of Judges of Québec. Thus, were present at this preliminary meeting representatives from the following authorities:

- The Chief Judge of the Court of Québec;
- The Conference of Judges of Québec;
- The Government of Québec;
- The City of Laval
- The City of Montreal;
- The City of Québec.

This meeting had the objective of informing the intervenors of the mandate of the Committee and to invite them to submit memoranda for the purpose of a hearing which was held on June 23, 1999, in Québec.

Only the Conference of Judges of Québec, the Chief Judge of the Court of Québec and the Government of Québec submitted a memorandum and were in fact heard on June 23, 1999. The three cities, Montreal, Laval and Québec, although interested by the matter, declined our invitation.

Consequently, on June 23, 1999, a hearing was held in Québec, at the Court House, and the following persons and groups were heard:

- the government of Québec, represented by Messrs. Maurice Charlebois, Marcel Lapointe, Paul Robitaille and Jacques Thibault, all four of the Secretariat of the Treasury Board;

- the Associate Deputy Minister for Management Services of the Department of Justice of Québec, Mrs. Louise Roy, was also present at the hearing and intervened on the matter of duties related expenses;

- the Chief Judge of the Court of Québec, the Honourable Huguette St-Louis and the Associate Chief Judge, the Honourable Rémi Bouchard, accompanied by Assistant Chief Judges, the Honourable Louise Provost, Jacques Lachapelle and Michel Jasmin;

- the Conference of Judges of Québec, represented by its president, the Honourable Claude C. Boulanger, as well as by the Honourable Claude Pothier, Gérald Laforest and Michel Desmarais.

The Committee also received a memorandum from the Association of Retired Judges of the Court of Québec and Mtre. Gaston Rondeau, its president

and retired Chief Judge, presented the memorandum with his retired colleagues, Mtres. René Beaudry and Alexandre Lesage.

Additional representations were submitted by the government and the Conference of Judges of Québec during the month of July 1999.

The members of the Committee had numerous consultations between themselves and held meetings on July 15, August 12, August 25 and September 1, 1999.

III. A BRIEF HISTORICAL REMINDER

The decision of the Supreme Court of Canada of September 1997 in the Reference re. the remuneration of judges, proposes to set up independent commissions to determine the remuneration of judges in Canada.

The matter of the pension plan, as everywhere else in Canada, has been the object of numerous studies and analyses and constitutes an important element in the global remuneration of judges. This element is intimately linked with the financial security of judges. And the latter is an integral part of the principle of judicial independence as confirmed by the Supreme Court of Canada in the matter of Reference re. remuneration of judges.

IV. EVOLUTION OF THE QUÉBEC PENSION PLAN

In 1989, the Vincent Committee described clearly in its report the evolution of the pension plan of provincially appointed judges.

Thus, until 1965, the remuneration of judges was granted for the life of the judge and consequently, during the entire period of retirement.

As of 1965 until 1978, the pension of judges was determined by legislation and was inferior to the remuneration of a sitting judge.

In 1979, legislation instituted a new pension plan, by having the judges contribute 7.5% of the remuneration they were receiving and establishing a pension annuity of 2.8% per year, without exceeding 70% of the remuneration.

Further to the Vincent Report, in 1990, the legislator corrected a number of irritants in the judges' pension plan, notably by bringing back to 65 years the age for allowable pension and by establishing the annuity of the pension on the basis of the three (3) best paid years, instead of five (5) years. Pension remained available after 25 years of service, independently from the age of the judge. It is also as of 1990 that the government, going further than the Vincent recommendations, made the pension plan non contributory, an element that was not requested by the judges.

Today, the main elements of the pension plan of judges for the Court of Québec and the cities of Montreal, Laval and Québec have been little changed since 1990. The submission of the Conference of Judges of Québec describes them as follows:

- It allows for the cessation of duty as of 65 years;
- it authorises a prolongation until 70 years of age;
- it recognizes pension after 25 years of duty, without relation to age;
- it grants a pension annuity equivalent to 2.8% per year of duty and is based on the three (3) best paid years;
- it is not contributory;
- it includes annual indexation of the annuity according to the consumer price index, minus 3%;
- it gives 50% of the annuity to the surviving spouse.

It should also be noted that since 1992, this plan allows for accumulation of annuity up to 90% of the salary of the judge.

V. COMMENTS OF THE CONFERENCE OF JUDGES OF QUÉBEC

The Conference of Judges of Québec believes that it is important to set up a pension plan which favours the renewal of the judiciary to better face an ever changing world. In its memorandum dated June 15, 1999, it had this to say:

> *"We believe that the renewal of the magistracy of the Québec State necessarily goes through a pension plan based not on a physical age criteria, but in a more flexible way on the number of years in office."*

Underlining the recent and important modification (November 1998) to the pension plan of judges appointed by the Federal government, the Conference requests the rule of 80, without regard to a minimum age for pension, which combines the years of service (at least 15 years) with an age criteria without a minimal threshold. The Conference, as a fall-back position, draws attention to the relevance of the formula recommended in the Poissant Report which suggested the following:

- for judges having reached the age of pension (70 years), to have the right to full pension at 2/3 of remuneration, after ten years of office; or

- for judges having reached the age of 65, to be entitled to a full pension at 2/3 of remuneration after 15 years of office.

The Conference also believes that the calculation of the pension should be based on the remuneration for the best year only and that the new plan should not suffer from a partial indexation formula as the one that has existed since 1990, being a payment adjusted in relation to the consumer price index minus 3% (CPI - 3%).

VI. THE OBSERVATIONS OF THE GOVERNMENT

In a study carried out in June 1999 on its behalf, by the firm of actuaries Towers Perrin and to which the Committee was given access, the Treasury Board indicated that the relative value of the pension plan for the judges of the Court of Québec compares to the pension plans of judges of other jurisdictions.

It states however in its memorandum that the present plan for the judges of the Court of Québec is comparable to other plans **essentially for appointments at a rather early age, 40 and below**.

In relation to this, in its "observations" presented to the Committee on June 23, 1999, the government stated that it was ready to improve the

situation of judges appointed later, while considering the notion of a second career, underlining that said notion had been brought up by the Committee in its report of August 1998. Along this line, it stated that it was willing to consider for judges, on a voluntary basis, a transfer to their pension plan years of participation recognized in another pension plan prior to their appointment as judge.

It admits however that by helping judges to retire at an earlier age, this will entail an increase in cost for the plan on the medium and long term and that this improvement is an interesting advantage for the plan.

Conversely, the government of Québec is opposed to the rule of 80 suggested by the Conference of Judges of Québec. It also rejects the scenarios proposed by the Committee in its report of August 1998, on the grounds that they are too costly and are not desired by the judges. It also invokes in its "*observations*" of June 23, 1999 all the elements linked to the present economic context in Québec, giving important weight to the budgetary position of the government which, in spite of having reached the deficit 0 objective, must face a non-competitive fiscal burden, along with its high level of debt.

Finally, the government of Québec is also opposed to the possibility of making the plan contributory. It is of the opinion that the contribution of judges should then be sufficient to support costs for past service and present

service related to the various improvements considered, which would bring the contribution of judges to a level much higher than what is legally allowed.

VII. THE PENSION PLANS OF JUDGES OF OTHER PROVINCES

The Committee requested Groupe-conseil Aon to examine the main elements of the pension plans of judges of other Canadian provinces. The report of Groupe-conseil Aon dated May 31, 1999 states that:

- the plans of all provinces are contributory, with the exception of Ontario where the contribution of 7% is related to social benefits and not to the pension plan;

- for the provinces of British Columbia, Saskatchewan, Nova Scotia and Prince Edward Island as well as Yukon, the rate of payment per year of service is of 3% or more;

- coming back to the province of Ontario, the recent recommendations of the Remuneration Examination Committee are to the effect that either should be granted a pension plan similar to the one for the judges of federal appointment, or another formula based on an annual annuity level superior to 3% (3.3%).

VIII. THE OBSERVATIONS OF THE COMMITTEE

The characteristics of the present plan

The Committee has examined the present plan of the judges of the Court of Québec and believes that a number of elements of the plan should be improved upon to make it more attractive and adequate.

The Committee believes that the institution of innovative elements favouring an earlier pension at a reasonable age with a significant minimum annuity will make the pension plan of the judges of the Court of Québec adequate. For this purpose, the Committee believes that it is necessary to correct certain elements of the plan which it finds to be deficient or inappropriate.

For example, today, the plan considers a maximum service of 35 years of service. Thus, a judge appointed at 35 can work up to 70 and accumulate a pension equivalent to 90% of the remuneration of the three best paid years. This goes far beyond the usual needs to which a pension plan must answer.

Another characteristics of the plan is to the effect is that it does not grant a minimum annuity for a judge wishing to leave his position before having carried out 25 years of service. This judge, whatever his age and year of appointment, will be allowed at 65 an annuity equivalent to his years of

service, multiplied by an annuity of 2.8%. This situation may lead to an insecure financial position for those appointed at a higher age. It is therefore important for the Committee to set up a minimum pension annuity which would encourage going off on pension at a reasonable age.

The Committee believes that the pension plan of the judges of the Court of Québec must be attractive to an attorney wishing to be appointed, as is the one for judges appointed by the Federal Government, while possibly being different and having its own characteristics.

The plan requested by the Conference of Judges of Québec is the one with the rule of 80 of the plan for judges appointed by the Federal Government, which offers full annuity when age, added to the years of service, totals 80. The Committee notes that this plan gives little weight to the difference in years of service between one judge and another. As an example, a judge having sat for fifteen (15) years will be entitled to the same pension as the one who has sat and contributed for twenty-five (25) years. This plan also does not take into account what was accumulated by attorneys before their appointment, especially for judges appointed at a later age.

Guiding principles retained by the Committee

The Committee does not believe that one can use economic and budgetary arguments, both for salary and for social advantages, and in this instance, for the pension plan.

By granting the judges of Québec a salary generally inferior to that of colleagues in other provinces or of federal appointment, the Government therefore imposes a smaller annuity on judges of the Court of Québec, as the annuity is a function of the salary. Thus, the Committee believes that the economic arguments were widely considered and used by the Government in establishing the salary of judges.

Moreover, the Committee believes that the judges of the Court of Québec should be granted a pension plan which is competitive with that of other judges having a comparable competence in Canada, keeping in mind that the five (5) economic and budgetary criteria mentioned in the "observations" of the government automatically affect the pension annuity through the salary. For the reasons mentioned above, the Committee believes that the judges who request parity with the judges of the Superior Court on the basis of work content, cannot use that argument when establishing the pension plan.

Furthermore, it is frequent, both in the public sector and in the private sector, that a same group of individuals benefits from the same pension plan,

even if their revenues vary considerably, the pension annuity being then in relation to the salary.

The Committee also does not believe that the proposal being put forward by the government to improve the plan for the judges appointed at a later age is equitable. The Committee refers here to the possibility of transfer of years of service accumulated in another pension plan.

This measure would be more beneficial for judges whose first career was in the public sector. For judges whose first career was in the private sector, it is either inapplicable, if the judge did not participate in any pension plan, which is the case for most attorneys who have an autonomous status, or difficult of application, if the judges participated in a number of private plans for which one would have to obtain agreement for transfers in each case.

The Committee believes it is preferable to take into account implicitly these plans or RRSPs accumulated, in the definition of the annuity formula, rather than to attempt to bring it back explicitly.

The Committee also does not rally to the argument of the government on the advantages given to the employees of the government in the introduction of voluntary departure programmes.

The government invokes that the employees have paid themselves a good part of this programme through the surplus accumulated in their pension plan. The Committee believes that this argument is purely technical, since if the judges had benefited from the same accounting arrangements as those used for the pension plan of the employees, the same circumstances would have allowed (probably) the development of a surplus in the pension plan of the judges, surplus which the judges could now use to improve the plan, in relation to the past years of service.

A new reality

The Committee believes that modifications are necessary to the pension plan of judges, so as to reflect the realities in which the new judges will now evolve and which did not exist thirty (30) years ago: different family context, social evolution which privileges earlier pension, in many cases, benefiting on the day of pension of various benefits acquired during a **career prior to the judiciary**, including the right to annuities from the Québec pension plan, without forgetting the need to renew the judiciary.

It should also be noted that judges are today appointed younger and must remain in office for numerous years before being entitled to pension under the present plan.

This being said, the Committee believes that by considering the pension remuneration acquired during the precedent career or careers, a judge must be able to reach a global objective of 70% of salary replacement on pension, which corresponds to approximately 75% of net salary after income tax. Thus, for the judges' pension plan, a replacement rate of 65% of the salary of a judge satisfies this objective and seems adequate.

In the case of judges appointed at a later age, the rate of salary replacement could be lower than 65%, while reaching the objective of 75% of net salary after income tax, if one considers revenue from different plans and the RRSPs which may have accumulated through preceding careers.

Also, the institution of a minimal annuity allowing a judge to go on pension, according to a formula which takes into account the number of years of service added to his age, will contribute to make the plan of judges adequate by allowing a judge having been appointed at a later age to take his pension earlier with a substantial annuity.

Always keeping in mind a pension with an adequate annuity after reasonable years of service, the Committee also believes that the annuity rate credited yearly, and which is now fixed at 2.8%, should be increased. This increase will benefit judges appointed at an earlier age as they will be in a position to take their pension earlier.

Also, the Committee proposes that this renewed plan be contributory and this for a number of reasons: it is now the norm for almost all judges in Canada. Furthermore, in view of the accrued benefits which are represented by the modifications proposed by the Committee, one should avoid too large an increase in the burden of the State, while making sure that judges do not contribute more than the increase in benefits in relation to the present pension plan.

The Committee points out that its recommendations relating to salary, in its report of August 1998, were made in the following context: the scenarios relating to the pension plan which were suggested took into account the eventual contribution of judges. We believe that a lack of contribution by the judges to their pension plan should not be used as a pretext by the government to justify a lower salary, but instead to recognize that there is room to improve the pension plan of judges of Québec in exchange for a contribution on their part.

The Committee also notes that judges are excluded from the Québec pension plan under Section 3e) of the Québec Pension Act (R.S.Q., c. R-9). This is explained by the fact that until 1965, judges received a pension equivalent to their remuneration and this, during their whole life. Thus, the government of the time did not wish a pensioned judge to receive an annuity

superior to the salary he was receiving. This would have been the case if the Québec pension plan had been added to his pension. Since that time, the situation has changed quite a bit and the Committee wonders why the government has not integrated the judges to the Québec pension plan. This annuity could be added to the pension annuity of judges.

It is therefore based on the above considerations that the Committee has come to the recommendations which will be found hereafter.

Taking into account the preoccupations stated hereinabove, the Committee recommends, to have an adequate pension plan for judges now in office in the Court of Québec, that they be allowed to choose a modified plan (hereafter referred to as the "new plan"), containing the following new elements:

- increase the annual annuity credit to 3% of the average remuneration of the three (3) best paid years, while limiting the annuity to 65%;

- allow the going off on pension with a minimum annuity of 55%, when the criteria of 80 is reached (age and years of service, without regard to the age reached);

- fix the contribution of participant to a pension plan to 7% annually;

- replace the criteria of going off on pension after 25 years of service by the one of 21.7 years of service, without regard to age.

This new plan is compulsory for all judges who will be appointed as of January 1, 2000, being the date of coming into force of the new elements proposed above.

By choosing this new plan, the judges presently in office will be granted all of the advantages, including those for years of service carried out before the date of coming into force of this new plan without however exceeding a maximum annuity of 65%.

However, the Committee does not find it appropriate to recommend that the pension annuity be based on the best year and believes that the three (3) best years' average should be kept.

The following chart illustrates the effects of the improvements hereinabove suggested on the pension plan of judges of the Court of Québec.

		Pension Age		% of annuity		
Age on appoint-ment		First pension age	First pension age with full annuity	First pension age	65 years	70 years
35	PRESENT PLAN	60	60	70%	84%	98%
	ANNUITY AT 3%	56.7	56.7	65%	65%	65%
	MP & 80 RULE	56.7	56.7	65%	65%	65%
40	PRESENT PLAN	65	65	70%	70%	84%
	ANNUITY AT 3%	61.7	61.7	65%	65%	65%
	MP & 80 RULE	60	61.7	60%	65%	65%
45	PRESENT PLAN	65	70	56%	56%	70%
	ANNUITY AT 3%	65	66.7	60%	60%	65%
	MP & 80 RULE	62.5	66.7	55%	60%	65%
50	PRESENT PLAN	65	N/A	42%	42%	56%
	ANNUITY AT 3%	65	N/A	45%	45%	60%
	MP & 80 RULE	65	N/A	55%	55%	60%
55	PRESENT PLAN	65	N/A	28%	28%	42%
	ANNUITY AT 3%	65	N/A	30%	30%	45%
	MP & 80 RULE	67.5	N/A	55%	30%	55%

N.B. The minimum annuity with rule of 80 is applied jointly with the annuity of 3%.

Based on the preceding chart, the examples that follow illustrate on the day of the option the effects suggested by the recommendations of the Committee affecting the pension plan:

- The judge is 65 and has 15 years of judiciary. If he chooses the new plan, he will contribute to this new plan and will be given the following choices:

  a) by applying the 80 factor, he will take his pension immediately with an annuity of 55%. With the present plan, he will be entitled to an annuity of 42% (2.8% x 15);

  b) he may also decide to continue to carry on his functions until he is 70 and he will then be entitled to an annuity of 60% (3% x 20). With the present plan, he will be entitled to an annuity of 56%.

- The judge is 65 and has 10 years of judiciary. If he chooses the new plan, he will contribute to this new plan and will have the following choices:

  a) at 67.5 years of age, through the application of the 80 factor, he will take his pension and be entitled to an annuity of 55%. With the present plan, he will be entitled to an annuity of 35%;

  b) if he continues until he is 70, he will still be entitled to an annuity of 55%, being the minimum annuity, where as the present plan would give him an annuity of 42%.

- The judge is 60 and has 20 years of judiciary. If he chooses the new plan, he will start paying into this new plan and will have the following choices:

  a) by the application of the 80 factor, he may take his pension immediately with an annuity of 60% (20 years x 3%). With the present plan, he will necessarily have to wait for the age of 65;

  b) he may also decide to continue to exercise his functions and contribute until he is 61.7 years of age, to then take his pension with an annuity of 65% (21.7 years x 3%);

  c) he may also decide to remain in office and contribute, then leave at any time until he is 70 years old with the maximum annuity of 65%.

- The judge is 60 and has 15 years of judiciary. If he chooses the new plan, he will then pay into the new plan and when the time comes, he will have the following choices:

  a) by the application of the 80 factor, at 62.5 years of age, he will take his pension with the minimum annuity of 55%;

  b) he may also continue his career and decide to quit at 65 years of age, with an annuity of 60% (20 years x 3%);

c) he may also stay in office until he is 66.7 years of age and quit with an annuity of 65%;

d) he may decide to continue to contribute and quit at age 70, with a maximum annuity of 65%.

- The judge is 55 and has 10 years of judiciary and decides on the following options:

a) at 62.5 years of age, he will have 17.5 years of magistracy, will satisfy the 80 criteria and may leave with a minimum annuity of 55%;

b) at 65 years of age, he will have 20 years of magistracy and may leave with an annuity of 60%, whereas under the present system, he will be entitled to 56%;

c) at 66.7 years of age, he may leave with a maximum annuity of 65% (21.7 x 3%), whereas under the present system, he would receive 60.76%;

d) he may decide to continue to contribute and leave at age 70, with the maximum annuity of 65%.

The Committee would like to stress that in relation to the maximum annuity fixed at 65%, the judge who would decide to pursue his career, in spite of having reached 65 years of age, continues to contribute in a proportion of 7% and his pension annuity will always remain at 65% and this, as is the case for federally appointed judges.

Costs related to the preceding recommendations

The Committee requested Groupe-conseil Aon to evaluate the costs related to the proposed improvements, being:

- to increase the annuity rate annually credited from 2.8% to 3%, while limiting this annuity to 65% of the final average remuneration; and
- to allow pension when the criteria of 80 is reached, with an annuity equivalent to 3% of the average remuneration per year of service, subject to a minimum of 55% and a maximum of 65%.

Also, the firm had to evaluate the annual costs and the impact on liabilities of the aforementioned proposed elements in relation to the present population of judges. The report of the firm is to be found as Schedule C.

No doubt that the improvements suggested have a significant impact on the liabilities and the annual costs of the plan. The Committee has retained

the hypothesis of the firm to the effect that 75% of the judges will take their pension according to the improvements proposed and the other 25% will not choose to opt for the new plan.

Under this hypothesis, the modifications proposed to the plan represent an increase in cost for current services of 7.2% of the annual salary mass of judges.

The Committee believes that this is the price to be paid if judiciary is to be given an adequate plan. As to the costs of the plan for the future, the contribution of 7% cancels almost totally the current service cost of said plan.

As for the costs of past service, it is assessed at 25.5 M$ under the hypothesis where all judges who are advantaged by the new plan joint it. This cost is a maximum and the real cost is unknown as it is impossible to foresee the number of judges who will take this option.

IX. YEARLY INDEXATION OF ANNUITY

In relation to the indexation of the annuity, the Committee believes that the present formula, being the consumer price index minus 3% (CPI - 3%), is penalizing and insufficient as compared to the pension plan of judges in

Canada. It has had the result for many years that no indexation has been granted on the annuity credits accumulated since 1990.

This formula is disadvantageous in relation to most of the formulas existing elsewhere in Canada. The following chart shows the characteristics applicable to annuities being paid for judges of other jurisdictions.

INDEXATION OF ANNUITIES ELSEWHERE IN CANADA	
British Columbia	100% of CPI, unless the special account is insufficient
Alberta	60% of CPI of Alberta
Saskatchewan	*Ad hoc*
Manitoba	66 2/3% of CPI, unless the special account is insufficient
Ontario	Portion accepted: 100% of industrial salaries index Non-agreed portion: CPI
Québec	CPI - 3%
New Brunswick	100% of CPI, maximum 6%
Nova Scotia	100% of CPI
Newfoundland	None
Prince Edward Island	100% of CPI
Federal	100% of CPI

Source: Groupe-conseil Aon
August 11, 1999

The indexation of annuities resulting from a pension plan constitutes a characteristic of high importance for the beneficiaries. This means that the annuities are indexed to the cost of living. In other words, one must ensure that the amounts which will be received by persons on pension keep their value for the full life of the beneficiary. With inflation rates which vary around 2% per year, this precaution may seem superfluous. Nevertheless, let us see with a concrete example how a non-indexed annuity can rapidly lose value. Let us suppose that an individual decides to go on pension at 65 and that he is entitled to an annuity of $75,000 per year. Inflation is 2% per year. The following chart shows the evolution in the real value of the annuity:

AGE	65 YEARS	70 YEARS	75 YEARS	80 YEARS	100 YEARS
INDEXED	$75,000	$75,000	$75,000	$75,000	$75,000
NON-INDEXED	$75,000	$67,930	$61,525	$55,725	$37,500

The chart shows that after 15 years, the beneficiary of the annuity receives $19,275 less than before in real terms. It is therefore important to protect the revenues of the beneficiaries by ensuring the indexation of their annuities.

In view of the preceding, the Committee **recommends**, for the judges who will opt for the new plan, the following:

- an indexation in relation to consumer prices less 1% (CPI - 1%). This indexation must apply as of January 1, 2000 to all annuity credits accrued since 1990, as well as to future annuity credits.

This recommendation constitutes an essential element of the new plan proposed. The government may not decide to exclude it without compromising the general economy of the new plan.

The Committee also adds that even if many Canadian provinces consider the full CPI as indexation, it is often accompanied by a maximum or other restrictions. The recommendation of the Committee is the CPI minus 1% but without a maximum.

According to the report of Groupe-conseil Aon, this recommendation represents an increase in cost for current service of 3.7% of the annual salary mass of judges.

X. ANNUITY TO THE SURVIVING SPOUSE

The Conference of Judges of Québec requested that the annuity payable to the spouse surviving a pensioned judge be increased from 50% to 60%.

The Committee does not believe it is appropriate to increase the annuity to 60%, in view of the fact that the recommendation to determine the annual

indexation of the annuity to be CPI minus 1% will also improve the annuity of the surviving spouse. Furthermore, it is also known that the present plan allows the judge to reduce by 3.5% or 5.7% the level of his annuity to grant his spouse an equivalent annuity of 60% or 66 2/3% of the annuity of the participant, as the case may be.

XI. THE TRANSFER AND BUY-BACK OF YEARS ACQUIRED BEFORE APPOINTMENT

The Conference of Judges of Québec wishes, and this on a voluntary basis, that there be a possibility to transfer and buy-back years of service acquired before the appointment of its members. The government, in its "*observations*", also seems willing to consider this possibility.

For the reasons explained above in this report, the Committee believes that to follow up on this recommendation would create inequities within the judiciary. For these reasons, the Committee has decided not to follow up on this request.

XII. THE JUDGE AFFLICTED WITH A PERMANENT DISABILITY

The Conference of Judges of Québec is preoccupied by the present situation, in relation to the interpretation of section 93.1 of the *Courts of Justice Act*, which creates a discretionary mechanism in favour of the executive power, whereby a judge afflicted by a permanent disability may be declared as not discharging his duties.

The government in its "*observations*", states in this regard that modifications could be made to the *Courts of Justice Act* to ensure that the judge who is declared medically disable of discharging his duties ***is not dismissed from his position***, but benefits from the salary insurance protection contemplated in his collective insurance plan and this, up to the age of 70. During this period, states the government, he would also benefit from the accruing of his years in his pension plan.

In view of the preceding, the Committee recommends in this respect:

- that the government modifies the *Courts of Justice Act* to protect the judge who has been declared medically disable of discharging his duties, to allow him on the one hand to benefit from the protection of salary insurance until his pension and, on the other hand, to also benefit from the accruing in his pension plan of the years during which he benefits from the salary insurance plan.

XIII. LEAVING ON PENSION WITHOUT ACTURIAL REDUCTION

The Conference of Judges of Québec requests that a judge take his pension at any time and this, without actuarial reduction. According to the Conference, section 232.1 of the *Courts of Justice Act* allows a judge to go on pension under the conditions stipulated in paragraphs 2 or 3 of section 228, but with a penalty. The Conference therefore requests that a judge may take his pension without penalty.

The Committee has checked this element with the CARRA in July 1999. It confirms that indeed section 232.1 of the *Courts of Justice Act* stipulates a penalty, when a judge is admitted to pension and when his age and years of service do not total 80 and this, so as to respect fiscal rules.

The CARRA however added that during the calculation of the annual supplementary annuity payable, article 2 of the Régime *de prestations supplémentaires* compensates the reduction applicable under section 232.1, which means that the judge suffers no penalty. A copy of the letter from the CARRA is annexed as Schedule D to the report.

The Committee also transmitted these explanations to the Conference of Judges of Québec which stated that it was satisfied by the answers supplied by the CARRA. Consequently, there is no need to make recommendation on this subject.

XIV. TRANSITIONAL RULES AND ACQUIRED RIGHTS

The Conference of Judges of Québec requested that any modification to the pension plan of judges be accompanied with an acquired rights clause, so as to respect the advantages for the judges now in office.

As stipulated in its report of August 1998, in this regard, the Committee recommends that the acquired rights of judges now in office be totally respected.

Therefore, the Committee **recommends**:

- that the new plan proposed be compulsory for all future judges appointed after January 1, 2000;
- that judges now in office be given the choice to join or not the new plan. For those who prefer to maintain the *status quo*, the present plan would remain the same for them and be now contributory;
- that the judges benefit from a six-month delay to take the decision to opt or not for the new plan and that during this period, information services be provided to the judges, so that they understand the consequences of the new plan and that they take, as the case may be, an enlightened decision. After this delay, it would not be possible to go back;

- for the judges who would decide to opt for the new plan, that all accumulated annuity credits until 1990 according to the formula then in force, being 100% of CPI, remain acquired and that all annuity credits accumulated as of 1990 be indexed according to the formula suggested, being CPI - 1%.

It is understood that for those who would decide to opt for the new plan, it is then the new rules that apply and consequently, the maximum of annuity fixed at 65% applies, even for the judges who have gone over this maximum.

XV. CREATION OF SEPARATE FUND

The Conference of Judges of Québec insists on the importance of using a fund separate from the Consolidated Fund of the Québec government, in relation to the management of the pension plan of judges.

At this point, the Committee does not believe it is necessary to recommend the creation of a separate fund.

XVI. REQUESTS NOT LINKED TO THE PENSION PLAN

Expenses relating to duties

It is section 121 of the *Courts of Justice Act* which deals with them. Any modifications to the expenses relating to duties must, in accordance with section 122.4 of the Act, be submitted to the Committee. The Conference of Judges of Québec describes in its submission administrative problems relating to the management of duties related expenses. The problem is that Order in Council 1139-85 as modified, and a directive of the then Chief Judge filed in 1992, create problems as to the items admissible to said duties related expenses.

For example, the government now refuses to reimburse expenses such as those related to cellular telephones or computer material, the above-mentioned Order and directives not covering them.

During the hearing of June 23, 1999, the Associate Deputy Minister of the Department of Justice promised to submit in the following weeks a draft Order in Council to modify Order in Council 1139-85 of June 12, 1985, to fulfill the requests of the Conference.

In fact, on July 7, 1999, the Committee received from the Associate Deputy Minister a draft Order in Council modifying Order in Council 1139-85,

dealing with the duties related expenses admissible for judges of the Court of Québec, including judges in authority. Copy of this draft Order in Council is annexed hereto as Schedule E.

The draft Order in Council was transmitted to the Conference of Judges of Québec for comments. The Conference believes that the wording of the draft Order in Council is "totally unacceptable and ignores once again the reality of the needs of the magistracy". In its view, the draft Order in Council as submitted would lead to interpretations which would be made by civil servants of the Department of Justice. For example, how should one interpret the wording suggested in the Order in Council and which reads as follows: "inasmuch as they have no indirect or recurrent effect on the budget of the Department of Justice".

The Conference instead suggests that the Order in Council determine:

- the amounts to which the judges are entitled;
- that the judges of the Court of Québec be reimbursed for expenses incurred within the exercise of their duties, upon presentation of appropriate documentation;
- that reimbursable expenses not include private expenses;

- that effective expenses be approved by the Chief Judge;
- that the Order in Council not list the admissible or inadmissible expenses.

Chief Judge Huguette St-Louis, in a correspondence sent to the Committee on August 19, 1999, declares being in agreement with the observations of the Conference and adds that the next Order in Council should contain the following paragraph:

> *"that reimbursable expenses not include expenses privately made: they include the expenses relating to duties approved by the Chief Judge."*

The Committee believes that there is no reason that the interpretation of duties related expenses, the amounts of which are already determined by law, be a source of frustration in the way they are managed. Consequently, the proposal of the Conference and of the Chief Judge seems desirable, especially where the categories of expenses would be approved by the Chief Judge. This would avoid a variety of interpretations. The Committee adds however that the new Order in Council should not create additional indirect costs for the government as this would mean an increase in the duties related expenses.

Consequently, the Committee **recommends** the following in relation to the contents of the Order in Council relating to the duties related expenses:

- that the expenses of the judges of the Court of Québec incurred within the exercise of their duties, be reimbursed upon presentation of supporting documents;

- that reimbursable expenses not include private expenses: they include the duties related expenses approved by the Chief Judge;

- that the new Order in Council create no additional cost for the government.

XVII. LEAVE WITHOUT PAY OR WITH DEFERRED PAY

In its report of August 1998, the Committee recommended the following in relation to leave without pay or with deferred pay:

> *"that powers be granted to the Chief Judge of the Court of Québec so that she may grant judges who require it and justify it a leave without pay or with deferred pay."*

Bill 64 presented in spring of 1999 to the National Assembly by the Minister of Justice followed up on this recommendation.

As for the government, it is preoccupied with the setting up of leave without pay or with deferred pay, as suggested by the report of the Committee of August 1998. Further to written details which were sent to the Committee on July 8, 1999, it concludes that any particular fiscal treatment, such as leave without pay or with deferred pay, is granted only when an agreement concerning a leave with deferred pay qualifies as a "plan or prescribed arrangement".

If there is no agreement to this effect, or if the agreement does not satisfy the definition of Revenue Québec for "plan or prescribed arrangement", it will be considered for fiscal purposes, as "an agreement to stagger remuneration" and the taxable remuneration of the judge will be equal to the remuneration he would have received.

The government therefore describes in its communication of July 8, 1999 the requirements of an agreement concerning a leave with deferred remuneration, to be in agreement with the definition of a "plan or prescribed arrangement" of Revenue Québec.

Further to the preceding and taking into account the precisions submitted by the Treasury Board in date of July 8, 1999, in relation to "the

leave without treatment or with deferred treatment", the Committee **recommends**:

- to materialize the recommendation made in its report of August 1998 relating to the "leave without remuneration or with deferred remuneration", to adopt the characteristics suggested by the Treasury Board in its document of July 8, 1999.

XVIII. SUBSTITUTE JUDGES

In its report of August 1998, the Committee did not recommend the setting up of a plan for substitute judges, suggesting instead that this question be examined in three (3) years, in relation with requests for leave without remuneration.

The Conference of Judges of Québec in its memorandum believes that this recommendation is difficult to apply, without ensuring that judges on leave be replaced. This is confirmed by the Chief Judge of the Court of Québec.

However, as stated in the memorandum of the Conference, the present plan being applied to retired judges makes it almost impossible to recruit retired judges to replace judges on leave.

In fact, according to articles 93, 118 and 244.3 of the *Courts of Justice Act*, the government may, for a period of time it determines, authorize a retired judge to exercise the judicial functions that are assigned to him by the Chief Judge. This judge, however, is entitled to remuneration equal to that of judges, from which is deducted the pension he receives and this judge may not acquire any right to a supplementary annuity amount. In other words, it is financially uninteresting for a retired judge to accept the position of substitute judge.

The Conference requires a *per diem* determined in relation to the base remuneration on more or less 220 days.

The Committee does not believe that the setting up of a plan of substitute judges with a *per diem* could correct the personnel problems, if there is one. If such were the case, the government should then revise the staffing of the Court of Québec, in agreement with the Chief Judge. Consequently, the Committee does not follow up on the request to establish a *per diem* for substitute judges and reiterates its recommendation to the effect that the question should be examined by the next Committee in relation to the requests for leave without pay or with deferred pay, as the case may be.

XIX. OTHER REQUESTS OF THE CONFERENCE

Deposit of the Report

Finally, the Conference wishes that the *Courts of Justice Act* be amended so that any report of the Committee be submitted to all interested parties as soon as it is presented.

Expense Account

Also, concerning expenses, the Conference wishes that the payment of lawyers' fees or any other fees taken on up to now by the Conference to make representations to the Committee be reimbursed.

The Committee does not believe that the mandate stipulated in paragraph 3 of section 246.29 of the *Act concerning* remuneration *of judges* allowes it to suggest modifications to the two elements described hereinabove. The Committee still believes that such request should be dealt with by the Minister of Justice.

XX. REQUESTS FROM THE ASSOCIATION OF RETIRED JUDGES OF QUÉBEC

The Association of Retired Judges of Québec in its memorandum, apart from supporting the requests of the Conference of Judges of Québec dealing

with the 80 rule, also requests that the recommendation of the report of the Committee of August 1998 dealing with the integration of the remuneration of sitting judges to the pension annuity be applied retroactively since 1978.

The Committee finds it unfortunate that the improvements to the global remuneration of the judges of the Court of Québec cannot retroact for those who are already on pension.

However, the Committee does not believe that its mandate allows it to make such a recommendation and this question should instead be submitted to the Minister of Justice within the framework of the study of Bill 64.

XXI. CONCLUSION

The examination process of the remuneration of the judges of the Court of Québec and of the Municipal Courts of Laval, Montreal and Québec was instituted by the *Act concerning the remuneration of judges* to reduce the presence of any interference in the determination of the remuneration and advantages granted to judges of provincial appointment.

Following on the recommendations which were made in August 1998, relating to the salary of judges, those contained in the present report are made within the framework of an analysis of the appropriate character which is

demanded by the Act which instituted the examination process. The proposed modifications to the pension plan of the Court of Québec are, in our opinion, necessary to allow the judiciary to renew itself quicker by the arrival of younger judges and therefore, by allowing judges who have been on the bench for a number of years or have reached a reasonable age to go on pension.

XXII. THE RECOMMENDATIONS OF THE COMMITTEE

The recommendations of the Committee relating to the pension plan and social advantages related to this plan and to the collective insurance plan are:

As to the pension plan

To make adequate the pension plan of the judges now sitting at the Court of Québec, to allow them to opt for the modified plan (hereinafter referred to as "the new plan"), including the following new elements:

- increase the annual annuity credit to 3% of the average remuneration of the best remunerated three (3) years, while limiting the annuity to 65%;

- allow the leaving on pension with a minimum annuity of 55%, when the criteria of 80 is met (age and years of service, without regard to the age reached);

- fix the contribution of the participants to the pension plan to 7% annually;

- replace the criteria of leaving on pension after 25 years of service by the one of 21.7 years of service, without regard to age.

As to the annual indexation of the annuity

For the judges who opt for the new plan:

- an indexation in relation to the consumer prices minus 1% (CPI - 1%). This indexation would apply as of January 1, 2000 to all annuity credits earned as of 1990, as well as to the credits for future annuities.

As for the judge afflicted with permanent disability

- that the government modify the *Courts of Justice Act* to protect the judge declared medically disable of performing his duty, to allow him on the one hand to benefit from the protection of salary insurance until his leaving on pension and, on the other hand, to

also benefit from the aggregate of his pension plan for the years during which he benefits from the salary insurance p[illegible]

As for transition rules and acquired rights

- that the new plan proposed be compulsory for all future judges appointed after January 1, 2000;

- that it be allowed for judges now in office to join or not the new plan. For those who prefer to maintain the *status quo*, the present plan will remain for them as it is today and be non-contributory;

- that the judges benefit from a delay of six (6) months to take the decision to opt or not for the new plan and that during this period, information services be offered to the judges, so that they understand the impacts of the new plan and that they take, as the case may be, an enlightened decision. After this date, it will not be possible to go back;

- for the judges who decide to opt for the new plan, that all annuity credits accumulated until 1990 under the plan then in force, being 100% of the CPI, remain acquired and that all annuity credits accumulated as of 1990 be indexed according to the formula suggested, being CPI - 1%.

As to the expenses relating to office

- that the expenses of the judges of the Court of Québec incurred within the exercise of their duties, be reimbursed upon presentation of appropriate documentation;

- that reimbursable expenses not include expenses incurred privately: they cover expenses relating to office as approved by the Chief Judge;

- that the new Order in Council creates no additional cost for the government.

As to the leave without pay or with deferred pay

- to materialize the recommendation made in its report of August 1998 relating to the "leave without pay or with deferred pay" to adopt the methods suggested by the Treasury Board in its document of July 8, 1999.

THE WHOLE RESPECTFULLY SUBMITTED.

The members of the Committee

Claude Bisson
President of the Committee

Dominique Vachon
Member

Claude Lamonde
Member

Conférence des juges du Québec

SCHEDULE A

Québec, le 18 janvier 1999.

L'Honorable Claude Bisson
McCarthy, Tétreault
« Le Windsor »
1170 Peel 5ième étage
MONTRÉAL (Québec) H3B 4S8

Monsieur le président,

Comme suite au dépôt du Rapport du Comité de la rémunération des juges de la Cour du Québec et des Cours municipales du 4 août 1998, la Conférence des juges du Québec demande la convocation du comité dans les plus brefs délais afin de donner suite à la deuxième recommandation qui se lit ainsi :

> ***« Que soit examinée, au cours des deux prochaines années, la question touchant le régime de retraite ainsi que celles touchant la rente payable au conjoint survivant du juge retraité, les cas de mise à la retraite anticipée, pour impossibilité d'exercer la fonction de juge, la transférabilité et le rachat d'années de service acquises avant la nomination à titre de juge. »***

Je vous demande de tenir, dans les plus brefs délais, une audience préparatoire afin d'établir les questions à être traitées.

Je vous remercie à l'avance de la diligence que vous porterez à ma demande. Dans l'attente de vous lire, veuillez donc agréer, monsieur le président, l'expression de mes salutations les plus distinguées.

Veuillez me croire,

Votre tout dévoué,

Le président,

Claude C. Boulanger

Conférence des juges du Québec

SCHEDULE A

Québec, le 2 mars 1999.

L'Honorable Claude Bisson
McCarthy, Tétreault
« Le Windsor »
1170 Peel 5ième étage
MONTRÉAL (Québec) H3B 4S8

Monsieur le président,

Pour faire suite à la rencontre avec votre Comité du 15 février dernier, je vous transmets copie de la modification souhaitée à notre régime de retraite. Cette modification est celle que l'on retrouve dans notre mémoire du mois de mai 1998.

Nous attendons donc l'avis de convocation pour la prochaine rencontre et dans l'attente, veuillez agréer, monsieur le président, l'expression de mes salutations les meilleures.

La Conférence des juges du Québec

Claude C. Boulanger, président

Gouvernement
du Québec

SCHEDULE B

La ministre de la Justice,
procureure générale et ministre responsable
de la Condition féminine

Le 10 mars 1999

L'Honorable Claude Bisson
Président du Comité de la rémunération
des juges de la Cour du Québec et des
cours municipales
McCarthy Tétrault
1170, rue Peel
Montréal (Québec)
H3B 4S8

Monsieur le Président,

J'accuse réception de votre lettre du 22 février dernier, à laquelle étaient jointes les prévisions budgétaires supplémentaires du Comité pour l'exercice financier 1998-1999 et ses prévisions pour l'exercice 1999-2000.

Conformément à l'article 246.39 de la *Loi sur les tribunaux judiciaires*, ces documents seront déposés devant l'Assemblée nationale, dans le délai prévu.

Aussi, comme le Comité s'apprête, en application du dernier alinéa de l'article 246.29 de la Loi, à reprendre ses travaux relativement au régime de retraite, je me permets, au nom du gouvernement, de vous demander d'examiner la modification qu'il propose d'apporter au régime à l'effet de le rendre contributif. En effet, il appert que le Québec soit la seule province où le régime de retraite des juges ne soit pas contributif.

Par ailleurs, je comprends que le gouvernement pourra compléter sa demande et formuler toute observation lorsque la demande formelle de la Conférence sera portée à son attention.

.../2

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Sainte-Foy (Québec)
G1V 4M1

Téléphone : (418) 643-4210
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En outre, j'aimerais que vous me confirmiez la possibilité, pour le gouvernement, d'introduire dans les travaux du Comité, une demande de modification au contrat d'assurance collective concernant la couverture de médicaments ayant fait l'objet d'approbation par les autorités compétentes.

Veuillez agréer, Monsieur le Président, l'expression de mes sentiments distingués.

La ministre de la Justice,

Linda Goupil

c.c. Monsieur Jacques Léonard, président
Conseil du trésor

AON

Groupe-conseil Aon

Rapport complémentaire sur les modifications au régime de retraite

présenté au

Comité de la rémunération des juges de la Cour du Québec et des cours municipales de Laval, de Montréal et de Québec

Sainte-Foy, le 11 août 1999

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Préambule

En vertu du mandat supplémentaire accordé à Groupe-conseil Aon inc. par le Comité de la rémunération des juges de la Cour du Québec et des cours municipales de Laval, de Montréal et de Québec, ci-après appelé le « *Comité* », il nous fait plaisir de déposer notre rapport qui vise à établir les coûts de certaines modifications au régime de retraite.

Les modifications analysées en vertu de ce mandat sont :

1. Augmentation du crédit de rente annuel de 2,8 % à 3 %; toutefois la rente est limitée à 65 % du traitement final moyen. De plus, la retraite est permise après 21,67 années au lieu de 25.

2. En plus des modalités modifiées ci-dessus, la retraite serait permise dès que le juge répond au critère « 80 »; aussi, une rente minimale égale à 55 % du traitement final moyen est garantie à compter de la date à laquelle le critère « 80 » est atteint.

3. Les modifications décrites en 2. en y ajoutant une clause d'indexation qui procurerait une indexation additionnelle de 50 % des premiers 3 % de l'IPC.

En plus de l'évaluation de ces coûts, le présent rapport dresse un tableau comparatif des diverses modalités d'indexation des rentes après la retraite applicables aux juges des autres juridictions canadiennes.

Il est important de noter que le coût de chaque modification est établi par rapport au régime actuel, et chacune indépendamment de l'autre; à moins d'indication contraire. De plus, le traitement annuel au 1er janvier 1999 que nous avons utilisé est de 118 032 $.

À la demande du Comité, nous avons analysé l'impact sur les coûts annuels du régime de retraite des juges de la Cour du Québec et des cours municipales, et sur la valeur des engagements de la modification suivante :

	RÉGIME ACTUEL	RÉGIME PROPOSÉ
Crédit de rente annuel	2,8 %	3,0 %
Date de retraite normale première date entre	65 ans et 25 années de fonction	65 ans et 21,67 années de fonction, soit lorsque la rente atteint 65 %
Rente maximale	aucune	65 %
Âge obligatoire de retraite	70 ans	70 ans
Indexation	IPC - 3 %	IPC - 3 %
Hypothèse de prise de retraite :		
• si service atteint avant 65 ans	100 % après 25 ans de service	100 % après 21,67 années de service
• si service atteint après 65 ans	10 % par année jusqu'à 25 ans de service ou 70 ans si antérieur	10 % par année jusqu'à 21,67 années ou 70 ans, si antérieur
Droits acquis	N/A	a) 3 % par année de service reconnu au 31 décembre 1998, sans maximum (retraite immédiate) b) 3 % par année, maximum 65 %

Afin d'établir notre estimation du coût des modifications proposées, nous avons procédé en trois étapes :

1. Comparaison entre nos calculs et les résultats de l'évaluation actuarielle du Régime de retraite des juges de la Cour du Québec, produite par la CARRA en date du 31 décembre 1996, et déposée en février 1998.

2. **Estimation du passif et des coûts annuels du régime actuel en date du 31 décembre 1998 sur la base de la population des juges en fonction le 12 mars 1999.**

3. **Estimation, au 31 décembre 1998, du passif et du coût annuel du régime proposé par le Comité sur la base des données au 12 mars 1999.**

On trouvera à l'annexe A un résumé des données et à l'annexe B un résumé de la méthode et des hypothèses actuarielles.

Les résultats de notre analyse sont les suivants :

TABLEAU I

	EN DATE DU 31 DÉCEMBRE 1998		
	RÉGIME ACTUEL	RÉGIME PROPOSÉ	AUGMENTATION
Passif [droits acquis a)]	95 200 000 $	112 400 000 $	17 200 000 $
Passif [droits acquis b)]	95 200 000 $	109 900 000 $	14 700 000 $
Coût annuel en % de la masse salariale	23,9 %	27,8 %	3,9 %
Masse salariale	31 900 000 $		

L'hypothèse de prise de retraite utilisée a un impact important sur le passif et le coût annuel du régime. Afin d'illustrer la sensibilité des résultats sur une variation de l'hypothèse de prise de retraite, nous avons supposé que 75 % des juges prendront leur retraite selon l'hypothèse décrite au tableau de la page précédente pour le régime proposé. Nous avons supposé que les autres 25 % ne changeront pas leur prise de retraite même si le régime est modifié et qu'ils se retireront selon l'hypothèse décrite au tableau précédent pour le régime actuel. Selon cette hypothèse, le passif selon les droits acquis a) pour le régime proposé s'établit à 109 800 000 $, pour une augmentation de 14 600 000 $ par rapport au régime actuel et le coût annuel en pourcentage de la masse salariale s'établit à 27,2 % pour une augmentation de 3,3 % par rapport au régime actuel.

MASSE SALARIALE

L'estimation du coût annuel présentée ci-dessus reflète les caractéristiques de la population actuelle en terme d'âge et d'années de service.

Une autre façon d'analyser l'impact d'un changement de régime est de comparer, à certains âges, ce que coûtera le régime en pourcentage du salaire que le juge recevra entre sa date de nomination et sa retraite.

Ainsi, nous estimons que le coût annuel à la nomination sera le suivant :

TABLEAU II

COÛT ANNUEL MOYEN DURANT LA CARRIÈRE EN % DU SALAIRE			
ÂGE À LA NOMINATION	RÉGIME ACTUEL	RÉGIME PROPOSÉ	ÉCART
30	28,6 %	32,5 %	3,9 %
35	26,3 %	30,2 %	3,9 %
40	23,6 %	27,5 %	3,9 %
45	22,0 %	24,7 %	2,7 %
50	22,6 %	24,2 %	1,6 %
55	23,1 %	24,8 %	1,7 %
60	23,9 %	25,6 %	1,7 %

Pour toute nomination après l'âge de 48,3 années, l'augmentation de coût est reliée au changement de 2,8 % à 3,0 % de crédit de rente annuel. À 40 ans ou avant, l'augmentation est due à une date de retraite plus hâtive, puisque le niveau de la rente est limité à 65 %. Entre 40 et 48,33 ans, ces facteurs s'entrecoupent.

Section 2 :
Rente à 3 %, avec rente minimale de 55 %

Une seconde demande du Comité est d'analyser le régime suivant qui reprend le régime de la section 1 en y ajoutant un critère de retraite anticipée dès que l'âge et le service totalisent « 80 points » auquel se greffe une rente minimale de 55 % du traitement final moyen lorsque le critère 80 est rencontré.

	RÉGIME ACTUEL	RÉGIME PROPOSÉ
Crédit de rente annuel	2,8 %	3,0 %
Date de retraite normale première date entre	65 ans et 25 années de fonction	65 ans et 21,67 années de fonction, soit lorsque la rente atteint 65 %
Rente maximale	aucune	65 %
Date facultative de retraite	aucune	règle du 80
Rente minimale	aucune	55 %, au critère 80
Âge obligatoire de retraite	70 ans	70 ans
Inde .ation	IPC – 3 %	IPC – 3 %
Hypothèse de prise de retraite :		
• si critère 80 atteint avant 65 ans et 21,67 années	N/A	100 %
• si service atteint avant 65 ans	100 % après 25 ans de service	100 % après 21,67 années de service
• si service atteint après 65 ans	10 % par année jusqu'à 25 ans de service ou 70 ans si antérieur	10 % par année jusqu'à 21,67 années ou 70 ans, si antérieur
Droits acquis	N/A	a) 3 % par année de service reconnu au 31 décembre 1998, sans maximum (retraite immédiate) b) 3 % par année, maximum 65 %

Les coûts de cette modification sont :

TABLEAU III

	EN DATE DU 31 DÉCEMBRE 1998		
	RÉGIME ACTUEL	RÉGIME PROPOSÉ	AUGMENTATION
Passif [droits acquis a)]	95 200 000 $	126 500 000 $	31 300 000 $
Passif [droits acquis b)]	95 200 000 $	124 000 000 $	28 800 000 $
Coût annuel en % de la masse salariale	23,9 %	32,7 %	8,8 %
Masse salariale	31 900 000 $		

Comme nous l'avons fait à la section 1, afin d'illustrer la sensibilité des résultats à l'hypothèse de prise de retraite, nous avons effectué l'évaluation du régime proposé en supposant que 75 % des juges prendront leur retraite selon l'hypothèse de prise de retraite décrite pour le régime proposé et que les autres 25 % ne changeront pas leur prise de retraite même si le régime est modifié et se retireront selon l'hypothèse décrite pour le régime actuel. Selon cette hypothèse, le passif selon les droits acquis a) pour le régime proposé s'établit à 120 700 000 $, soit une augmentation de 25 500 000 $ par rapport au régime actuel et le coût annuel en pourcentage de la masse salariale s'établit à 31,1 %, soit une augmentation de 7,2 % par rapport au régime actuel.

De plus, nous estimons le coût moyen à la nomination comme suit :

TABLEAU IV

COÛT ANNUEL MOYEN DURANT LA CARRIÈRE EN % DU SALAIRE			
ÂGE À LA NOMINATION	RÉGIME ACTUEL	RÉGIME PROPOSÉ	ÉCART
30	28,6 %	32,5 %	3,9 %
35	26,3 %	30,2 %	3,9 %
40	23,6 %	29,0 %	5,4 %
45	22,0 %	28,6 %	6,6 %
50	22,6 %	32,3 %	9,7 %
55	23,1 %	33,3 %	10,2 %
60	23,9 %	37,9 %	14,0%

Pour toute nomination avant l'âge de 36,7 années, l'augmentation du coût est la même qu'à la section 1, puisque la rente maximale est atteinte avant le critère 80.

Entre 36,7 ans et 43,3 ans, l'anticipation de la date de retraite augmente la valeur de la rente d'un pourcentage supérieur au ratio d'une année de crédit supplémentaire sur la rente accumulée.

Après 43,3 ans, la rente minimale de 55 % prend tout son effet.

Section 3 :
Rente à 3 %, avec rente minimale et indexation

Une troisième demande au Comité est d'analyser le régime décrit ci-après qui reprend le régime de la section 2 en y ajoutant une clause qui procure une indexation additionnelle de 50 % des premiers 3 % de l'IPC.

	RÉGIME ACTUEL	RÉGIME PROPOSÉ
Crédit de rente annuel	2,8 %	3,0 %
Date de retraite normale première date entre	65 ans et 25 années de fonction	65 ans et 21,67 années de fonction, soit lorsque la rente atteint 65 %
Rente maximale	aucune	65 %
Date facultative de retraite	aucune	règle du 80
Rente minimale	aucune	55 %, au critère 80
Âge obligatoire de retraite	70 ans	70 ans
Indexation	IPC – 3 %	50 % des premiers 3 % de l'IPC + IPC – 3 %
Hypothèse de prise de retraite :		
• si critère 80 atteint avant 65 ans et 21,67 années	N/A	100 %
• si service atteint avant 65 ans	100 % après 25 ans de service	100 % après 21,67 années de service
• si service atteint après 65 ans	10 % par année jusqu'à 25 ans de service ou 70 ans si antérieur	10 % par année jusqu'à 21,67 années ou 70 ans, si antérieur
Droits acquis	N/A	a) 3 % par année de service reconnu au 31 décembre 1998, sans maximum (retraite immédiate) b) 3 % par année, maximum 65 %

Les coûts de cette modification sont :

TABLEAU V

	EN DATE DU 31 DÉCEMBRE 1998		
	RÉGIME ACTUEL	RÉGIME PROPOSÉ	AUGMENTATION
Passif [droits acquis a)]	95 200 000 $	135 000 000 $	39 800 000 $
Passif [droits acquis b)]	95 200 000 $	132 200 000 $	37 000 000 $
Coût annuel en % de la masse salariale	23,9 %	36,8 %	12,9 %
Masse salariale	31 900 000 $		

De plus, nous estimons le coût moyen à la nomination comme suit :

TABLEAU VI

COÛT ANNUEL MOYEN DURANT LA CARRIÈRE EN % DU SALAIRE			
ÂGE À LA NOMINATION	RÉGIME ACTUEL	RÉGIME PROPOSÉ	ÉCART
30	28,6 %	37,6 %	9,0 %
35	26,3 %	34,5 %	8,2 %
40	23,6 %	32,9 %	9,3 %
45	22,0 %	32,2 %	10,2 %
50	22,6 %	36,1 %	13,5 %
55	23,1 %	37,0 %	13,9 %
60	23,9 %	41,8 %	17,9 %

Ce tableau résume les modalités applicables aux rentes en cours de paiement pour les juges des autres juridictions.

		# de juges
Colombie Britannique	100 % de l'IPC à moins que le compte spécial soit insuffisant	106
Alberta	60 % de l'IPC de l'Alberta	105
Saskatchewan	ad hoc	46
Manitoba	66 2/3 % de l'IPC, à moins que le compte spécial soit insuffisant	35
Ontario	portion agréée : 100 % de l'indice des salaires industriels portion non agréée: IPC	239
Québec	IPC – 3 %	270
Nouveau-Brunswick	100 % de l'IPC, max. 6 %	23
Nouvelle-Écosse	100 % de l'IPC	40
Terre-Neuve	Aucune	23
Ile-du-Prince-Edouard	100 % de l'IPC	2
Fédéral	100 % de l'IPC	770

RÉGIME DE RETRAITE DES JUGES DE LA COUR DU QUÉBEC

HOMMES

Âge	Années de service								
	0 - 4	5 - 9	10 - 14	15 - 19	20 - 24	25 - 29	30 - 34	35 et +	Total
19 et -									
20 - 24									
25 - 29									
30 - 34									
35 - 39									5
40 - 44	4	1							31
45 - 49	12	16	3						43
50 - 54	7	16	14	6					53
55 - 59	5	11	21	13	3				44
60 - 64	1	9	11	11	10	2			44
65 et +	1	3	5	9	18	8			220
Total	30	56	54	39	31	10			

Âge moyen à la nomination : 44,6 ans

Nombre moyen d'années de service au 1998-12-31 : 12,8 ans

RÉGIME DE RETRAITE DES JUGES DE LA COUR DU QUÉBEC

FEMMES

Âge	Années de service								
	0 - 4	5 - 9	10 - 14	15 - 19	20 - 24	25 - 29	30 - 34	35 et +	Total
19 et -									
20 - 24									
25 - 29									
30 - 34									
35 - 39	1								1
40 - 44	6	2							8
45 - 49	6	10	2						18
50 - 54	3	4	6						13
55 - 59	1		3	2					6
60 - 64									
65 et +		2	1	1					4
Total	17	18	12	3					50

Âge moyen à la nomination : 42,3 ans

Nombre moyen d'années de service au 1998-12-31 : 8,0 ans

RÉGIME DE RETRAITE DES JUGES DE LA COUR DU QUÉBEC

TOTAL

	Années de service								
Âge	0 - 4	5 - 9	10 - 14	15 - 19	20 - 24	25 - 29	30 - 34	35 et +	Total
19 et -									
20 - 24									
25 - 29									
30 - 34									
35 - 39	1								1
40 - 44	10	3							13
45 - 49	18	26	5						49
50 - 54	10	20	20	6					56
55 - 59	6	11	24	15	3				59
60 - 64	1	9	11	11	10	2			44
65 et +	1	5	6	10	18	8			48
Total	47	74	66	42	31	10			270

Âge moyen à la nomination : 44,2 ans

Nombre moyen d'années de service au 1998-12-31 : 11,9 ans

Annexe B :
Méthodes et hypothèses actuarielles

Méthode d'évaluation :

Le passif est déterminé en projetant d'abord, à la date prévue de la retraite, la rente totale payable au juge, découlant des années antérieures et postérieures à la date d'évaluation.

Le passif est alors égal au ratio du nombre d'années de fonction à la date d'évaluation sur le nombre total d'années de fonction prévues à la date de la retraite multiplié par la valeur actualisée à la date d'évaluation de la rente totale déterminée à l'étape précédente.

Aux fins d'établir le passif pour les années en fonction avant le 1er juillet 1990 pour lesquelles la rente comporte une modalité de plein d'indexation au coût de la vie, nous avons considéré que cette rente était égale à 2,8 % par année de fonction avant cette date.

Le coût annuel est égal à la valeur d'une année de service pour l'ensemble des juges en fonction au 1er janvier 1999 divisée par la masse salariale au 31 décembre 1998.

Hypothèses démographiques :

Mortalité : La table GAM-83, sans projection

Proportion mariée au décès : Homme : 80 %

Femme : 40 %

Taux de prise de la retraite :

Régime actuel :

Service	*Âge*		
	16-64	*65-69*	*70*
0-24	N/A	10 %	100 %
25	100 %	100 %	100 %

Régime proposé : voir section respective

Annexe B :
Méthodes et hypothèses actuarielles

Hypothèses économiques :

Année	*Indexation*		*Augmentation Salaire* %	*Intérêt Nominal* %
	IPC %	IPC – 3% %		
1999	2,7	0,2	3,5	7,3
2000	3,0	0,5	3,75	7,3
2001	3,2	0,7	4,0	7,3
2002	3,5	1,0	4,5	7,3
2003	3,5	1,0	5,0	7,6
2004	3,9	1,4	5,0	7,6
2005	4,0	1,5	6,0	8,0
2006	4,4	1,9	6,0	8,0
2007	4,5	2,0	6,0	8,0
2008	4,5	2,0	6,0	8,0
2009	4,5	2,0	6,0	8,0
2010	4,5	2,0	6,0	8,0
2011	4,5	2,0	6,0	8,0
2012	4,5	2,0	6,0	8,0
2013	4,5	2,0	6,0	8,0
2014	4,5	2,0	6,0	8,0
2015	4,5	2,0	6,0	8,0
2016	4,5	2,0	6,0	7,9
2017	4,5	2,0	6,0	7,8
2018	4,5	2,0	6,0	7,7
2019	4,5	2,0	6,0	7,6
2020 et +	4,5	2,0	6,0	7,5

Crédit annuel de 3 %, maximum 65 %

55 (%)	56 (%)	57 (%)	58 (%)	59 (%)	60 (%)	61 (%)	62 (%)	63 (%)	64 (%)	65 (%)	66 (%)	67 (%)	68 (%)	69 (%)	70 (%)
60,0	63,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0
57,0	60,0	63,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0
54,0	57,0	60,0	63,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0
51,0	54,0	57,0	60,0	63,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0
48,0	51,0	54,0	57,0	60,0	63,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0
45,0	48,0	51,0	54,0	57,0	60,0	63,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0
42,0	45,0	48,0	51,0	54,0	57,0	60,0	63,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0
39,0	42,0	45,0	48,0	51,0	54,0	57,0	60,0	63,0	65,0	65,0	65,0	65,0	65,0	65,0	65,0
36,0	39,0	42,0	45,0	48,0	51,0	54,0	57,0	60,0	63,0	65,0	65,0	65,0	65,0	65,0	65,0
33,0	36,0	39,0	42,0	45,0	48,0	51,0	54,0	57,0	60,0	63,0	65,0	65,0	65,0	65,0	65,0
30,0	33,0	36,0	39,0	42,0	45,0	48,0	51,0	54,0	57,0	60,0	63,0	65,0	65,0	65,0	65,0
27,0	30,0	33,0	36,0	39,0	42,0	45,0	48,0	51,0	54,0	57,0	60,0	63,0	65,0	65,0	65,0
24,0	27,0	30,0	33,0	36,0	39,0	42,0	45,0	48,0	51,0	54,0	57,0	60,0	63,0	65,0	65,0
21,0	24,0	27,0	30,0	33,0	36,0	39,0	42,0	45,0	48,0	51,0	54,0	57,0	60,0	63,0	65,0
18,0	21,0	24,0	27,0	30,0	33,0	36,0	39,0	42,0	45,0	48,0	51,0	54,0	57,0	60,0	63,0
15,0	18,0	21,0	24,0	27,0	30,0	33,0	36,0	39,0	42,0	45,0	48,0	51,0	54,0	57,0	60,0
12,0	15,0	18,0	21,0	24,0	27,0	30,0	33,0	36,0	39,0	42,0	45,0	48,0	51,0	54,0	57,0
9,0.	12,0	15,0	18,0	21,0	24,0	27,0	30,0	33,0	36,0	39,0	42,0	45,0	48,0	51,0	54,0
6,0	9,0	12,0	15,0	18,0	21,0	24,0	27,0	30,0	33,0	36,0	39,0	42,0	45,0	48,0	51,0
3,0	6,0	9,0	12,0	15,0	18,0	21,0	24,0	27,0	30,0	33,0	36,0	39,0	42,0	45,0	48,0
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0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	3,0	6,0	9,0	12,0	15,0	18,0	21,0	24,0
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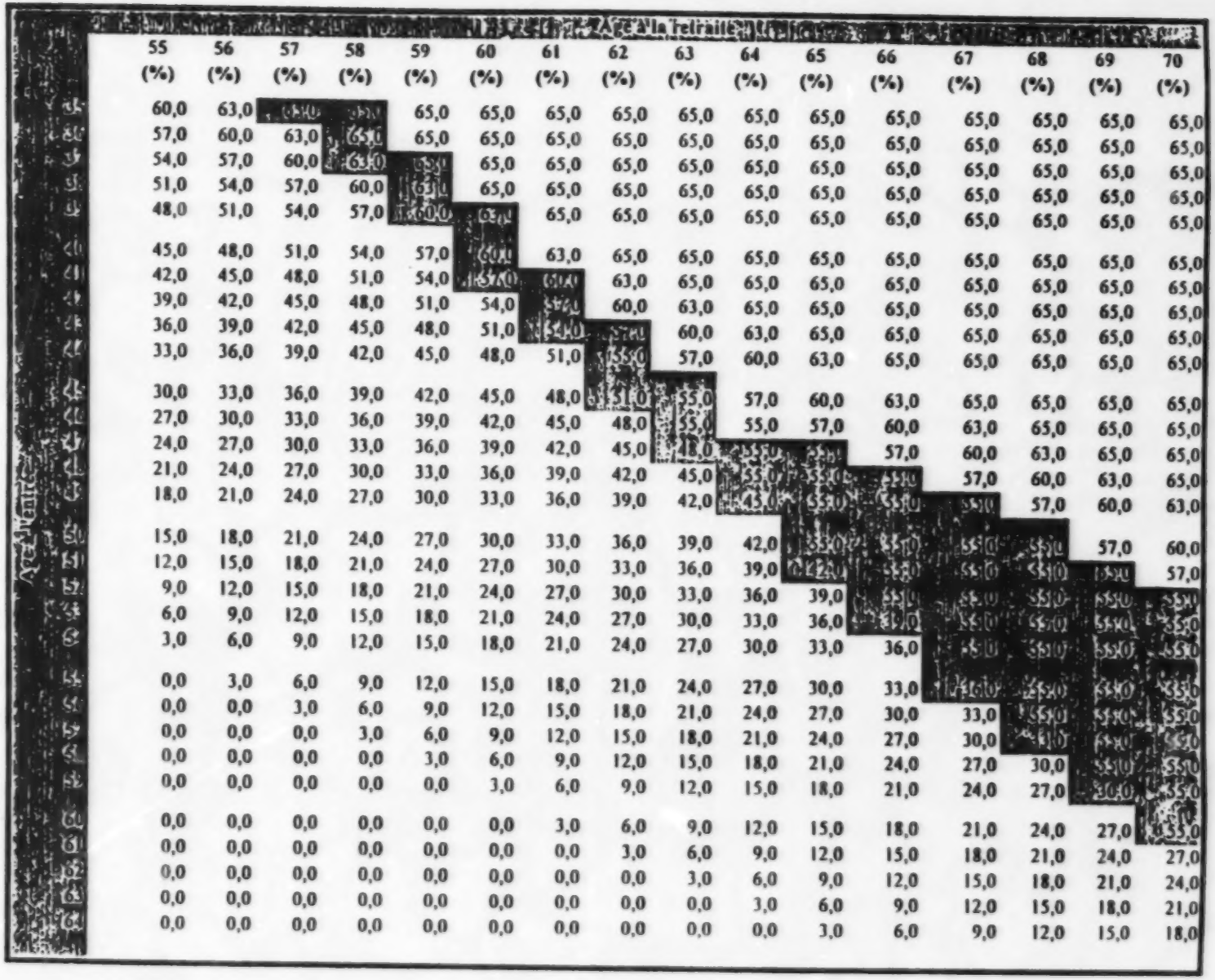
0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	3,0	6,0	9,0	12,0	15,0	18,0
0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	3,0	6,0	9,0	12,0	15,0



L'ombragé indique l'âge auquel la règle 80 est atteinte ou lorsque la rente minimale de 55% s'applique

SCHEDULE D

Le 28 juillet 1999

Me Louise Fecteau
Rochefort & Associés
1625, rue Sherbrooke Ouest
Montréal (Québec)
H3H 1E2

Objet : Articles 228 et 232.1 de la Loi sur les tribunaux judiciaires; article 2 du Régime de prestations supplémentaires (RPS)

Me Fecteau,

Pour faire suite à votre demande formulée lors de notre récente conversation téléphonique ainsi qu'à votre lettre, j'ai le plaisir de vous confirmer les informations demandées.

L'article 232.1 de la Loi sur les tribunaux judiciaires s'applique au juge admis à la retraite avec au moins 25 années de service ou au moins 20 années de service s'il a opté au RRJCQ et était en fonction le 30 mai 1978 et dont l'âge et les années de service ne totalisent pas 80, et ce, afin de respecter les règles fiscales.

Toutefois, lors du calcul de la prestation annuelle supplémentaire payable, l'article 2 du Régime de prestations supplémentaires vient compenser la réduction applicable à l'article 232.1, ce qui fait que le juge ne subit aucune pénalité.

Vous trouverez ci-annexée une copie des articles concernés en référence.

Espérant le tout à votre entière satisfaction, je vous prie d'agréer, Me Fecteau, mes salutations distinguées.

Diane Olivier

Diane Olivier
Bureau des conseils techniques

p.j.

SCHEDULE E

CONCERNANT une modification aux dépenses de fonction remboursables du juge en chef, du juge en chef associé, des juges en chef adjoints, des juges coordonnateurs, des juges coordonnateurs adjoints et des autres juges de la Cour du Québec

PROJECT

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La ministre de la Justice expose :

QUE la Loi sur les tribunaux judiciaires (L.R.Q., chapitre T-16 ; 1997, chapitre 84) prévoit, à l'article 121, que le gouvernement peut, par décret, établir le montant et la nature des frais que peuvent engager les juges de la Cour du Québec dans l'accomplissement de leurs fonctions et qui peuvent leur être remboursés ;

QU'en vertu de l'article 122.4 de cette loi, le gouvernement ne peut prendre les décrets visés à l'un des articles 115 à 122.2 qu'après que les prescriptions de la Partie VI.4 de cette loi aient été observées ;

QUE le Comité de la rémunération des juges de la Cour du Québec et des cours municipales, institué par la Partie VI.4 de cette loi, a remis son rapport le **« insérer ici la date de remise du rapport »** ;

QU'en vertu de l'article 246.44 de cette loi, l'Assemblée nationale a, par résolution adoptée le **« insérer ici la date de la résolution »**, approuvé les recommandations du comité relatives à la nature des frais que peuvent engager les juges de la Cour du Québec dans l'accomplissement de leurs fonctions et qui peuvent leur être remboursés ;

QU'en vertu de l'article 246.44 de cette loi, il revient ensuite au gouvernement de prendre avec diligence, les mesures requises pour mettre en œuvre la résolution de l'Assemblée ;

QU'en application de l'article 123 de cette loi, un décret adopté en vertu de l'article 121 entre en vigueur à la date de sa publication à la *Gazette officielle du Québec* ou à toute autre date antérieure ou ultérieure qui y est fixée ;

QUE les dépenses de fonction des juges de la Cour du Québec sont présentement déterminées par le décret n° 1139-85 du 12 juin 1985, modifié par les décrets n^os^ 2003-87 du 22 décembre 1987, 448-90 du 4 avril 1990, 174-96 du 7 février 1996 et 609-99 du 2 juin 1999 ;

QU'il y a lieu de modifier de nouveau le décret n° 1139-85 du 12 juin 1985 ;

EN CONSÉQUENCE, la ministre de la Justice recommande :

QUE le deuxième alinéa du dispositif du décret n° 1139-85 du 12 juin 1985 soit remplacé par le suivant :

« Que les dépenses remboursables ne comprennent pas les dépenses faites à titre privé ; elles comprennent les dépenses utiles dans l'exercice des fonctions et qui ne sont pas remboursables autrement, en autant qu'elles n'aient aucune incidence indirecte ou récurrente sur le budget du ministère de la Justice. »

QUE le décret ait effet à compter du

La ministre de la Justice,

SCHEDULE F

Liste des mémoires transmis au Comité

- Mémoire de la Conférence des juges du Québec
- Les observations du gouvernement du Québec
- Notes du juge en chef afférentes aux représentations faites devant le Comité
- Mémoire de l'Association des juges retraités du Québec

Liste des études demandées par le Comité

- Rapport du Groupe-conseil Aon sur les modifications au régime de retraite *(31 mai 1999)*
- Rapport du Groupe-conseil Aon sur les modifications au régime de retraite *(11 août 1999)*
- Étude sur les dimensioons historiques du principe de l'indépendance judiciaire de Karim Benyeklef